9TH CONFERENCE OF THE ASIAN OMBUDSMAN ASSOCIATION

"Evolving Ombudsman Offices"

Session 5

"Development of Specialty and Industry Ombudsmen and their relationship with the Ombudsman"

"PARLIAMENTARIAN AND SPECIALIZED OMBUDSPERSONS: THE NEW ATTITUDES AND TOOLS".

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It is my great honor and pleasure to participate at this significant event – the 9th Asian Ombudsman Association Conference on "Evolving Ombudsman Offices" to learn experience of the Ombudspersons of the region and participate as a panelist at the Session 5 "Development of Specialty and Industry Ombudsmen and their relationship with the Ombudsman".

In my presentation, entitled "Parliamentarian and specialized ombudspersons: the new attitudes and tools" I will briefly share with you some views about the evolving the Ombudsman office, the practice on relationship between ombudsmen on human rights and specialized ombudspersons in different fields of ensuring the human rights as well as my vision on their effectiveness.

I would like to begin my presentation with the congratulations on the occasion of the 60th Anniversary of the United Nations that was celebrated on 24 October this year.

On 10 December 1948 UN Universal Declaration on Human Rights was adopted and practically this event marked beginning of the new approach and creation of the new mechanisms on Human Rights promotion and protection worldwide.

Nowadays Human Rights protection Institutions have a wide spectrum of the instruments that were based mainly by the United Nations Conventions (Covenant on Civil and Political Rights and Covenant on Economic, Social and Cultural Rights), CEDAW, CRC and other).

The important legal act for each country is the Constitution.

On 12 November 2005 we celebrated the 10th Anniversary of the Adoption of the first Constitution of the Independent Republic of Azerbaijan. One third of 158 articles of this Constitution are devoted to the Human Rights and Freedoms.

We have not specialized ombudsmen in our country that’s why I’ll share with you all some general views.

A lot of the National Laws, Regulations and other legal documents have been adopted in the frames of the wide reforms in the legislative and judiciary system and they are serving as supplementary tools in ensuring of Human Rights of the citizens.

The history of Ombudsman institute exceeds two hundred years.

It is well known fact that the dynamic of growth of these Institutions is running with the particularly fast temps beginning from the last decades of the previous century. At the same time, different new kinds of institutions appeared during this period of time.

These are new non-judicial means for protection of Human Rights, National Human Rights Institutions, nongovernmental organizations (NGOs), Community-Based Organizations (CBOs) and other. And either Ombudsman Institution or any other National Human Rights Institutions should be a part of the country’s approach to the promotion and protection of Human Rights, the rule of Law and good governance.

In the last decades Ombudsman Institution faced extremely fast development in quantity as well as in quality. The roots of that phenomenon lay in big changes in the political, economic, social development in all countries of the world.

The new approach in sustainable development, pluralism of ideas has been sharply increased, being reflected in the governance system as well as on the relationship between the authorities and citizens.

At the same time the new challenges appear, that require high standards in the democratization of the governance, guarantee of the rule of law, as well as in protection of the fundamental Human Rights. In this regard, the new mechanisms and tools are needed.

Now I would like to introduce you in a few sentences my country, that was long period of time a part of the Soviet Union. Geographically it is bridge between Europe and Asia.

The issues of the Human Rights play special role in the Post Soviet countries. It is obvious that the nations, affected by the Soviet regime during long historical period had the problems with the genuine respect of human rights.

After the collapse of the Soviet Union these countries declared their independence.

The transition period to the democratic secular state, ruled by law in Azerbaijan, that gained its independence in 1991 is aggravated by long term neighboring country – Armenia’s aggression resulted in great material and moral damages. 20% of the country’s territory is occupied up to now; about 1 mln of 8 mln population became refugees and IDPs with violation of their basic human rights. Can you imagine the life of 100 000 children, born in the refugee camps and deprived of all human rights from the birth.

It is clear that in such situation one of the priorities of the Ombudsman is protection of Human Rights of people suffered from war.

In spite of these difficulties during the last decade Azerbaijan became a country of significant economic, social and legal reforms.

Azerbaijan integrates rapidly to the International Community. It is a member of the UN (since 1992), and of the Council of Europe (since 2001).

During the short period of independence the country ratified more than 220 Conventions, including European Convention on Human Rights, CEDAW and Convention on the rights of Child (CRC). The process of adaptation of the National legislation to the International standards is being developed.

As it is known Council of Europe is actively involved in cooperation and assistance to member states in setting up non-judicial bodies and creation of the Ombudsman Institute was one of the commitments of Azerbaijan for adoption to the Council of Europe.

On December 28, 2001 the Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan was adopted and on July 2, 2002 the first Ombudsman was elected by Parliament. The office was founded, documentation prepared, staff was hired very dynamically and already on October 28, 2002, the first complainers were received.

The Parliamentary Ombudsmen were set up in 13 other former Soviet Republics.

Multiple Ombudsman Institutions have also been created in different countries. The specialized Ombudsman Institutions were established in European countries like Sweden, Austria, Hungary, United Kingdom, Lithuania and other. For example in addition to the Seimas Ombudsman, a national parliamentary Ombudsman that has competence over a wide number of issues and authorities, Lithuania set up two other Parliamentary Ombudsmen—for Equal Opportunities and for Child Rights. Both of them are independent Seimas Ombudsmen. In USA and Canada it were appointed specialized Ombudsmen on child rights, health care, labor rights etc. In Asian region – Kazakhstan has also the Equal Opportunities and Child’s Rights Ombudsman Institutions. In Uzbekistan, the national Ombudsman is considering another model for a specialized Ombudsman—a statute to create the position of Deputy Ombudsman for the rights of the prisoners and detained persons, on penitentiaries issues within the office of the national Ombudsman. Both the Lithuanian and Uzbek models keep the independence of the specialized Ombudsmen in the parliamentary framework.

In Sweden Parliamentary Ombudsmen are elected by Parliament and help to maintain public confidence in the activities of the authorities. Nearby, other Ombudsmen exist in a number of special areas (equal opportunities, against ethnic discrimination, against discrimination because of sexual orientation, children’s rights, disability, press Ombudsman). These are appointed by government (ministries, etc.), but have similar duties, each in a particular sphere.

Sometimes the diversity of Ombudsman Institutions in the country is causing confusion in the public's mind about to whom urge with a complaint in concrete case?

As an alternative to creating multiple Parliamentary Ombudsman Institutions, Ombudsmen being interested in protecting the rights of special groups such as women, children, elderly, disabled, ethnic minorities etc. could encourage parliament by having one or more Deputy Ombudsman positions in frames of the Ombudsman law with specific responsibility to receive and investigate the corresponding complaint. The Deputy Ombudsman then would become a focal point in the Ombudsman's office to receive and investigate complaints of the certain vulnerable groups and address their special concerns.

In other model, a regional Ombudsman can be created being based on regional legislation and appointed in certain region without any relationship to the National Parliamentarian Ombudsman. The Russian Federation Ombudsman, for example, noted that the Ombudsman law in his country does not specify the situation with regional ombudsmen and does not clearly define the competencies of each of them. Regional Ombudsmen in Russian Federation (in over than 30 oblast from existing 89) nowadays are being elected in accordance with the regional laws without any vertical relations with the National Parliamentarian Ombudsman.

The international practice on creating of the multiple Ombudsman Institutions on protection of human rights is not always justified itself. It creates some problems for the countries where it is already exist. The concrete cases of human rights violations are reflecting the problems in different fields. Sometimes complainer can not identify to which Ombudsman to apply, the right choice is the problem and create the new challenges. For example in family issues when you can find a violations of the rights of the family member, is it more appropriate to apply to Ombudsman on Woman Rights, Child Rights, equal opportunities or any other?.

For the countries of new democracy like my country it is very important to learn international experience and take into consideration all above mentioned experience just at the beginning of the activities of Ombudsman. The young Ombudsman Institution in Azerbaijan has also some good

experience in the field of promotion and protection of human rights of different groups of country habitants.

Despite the diversity of forms and titles, all Ombudsman Institutions have similarities in concerns, competences, attitudes and tools.

Commissioners shall be independent and obey only the Constitution and Law of the country, their activities shall be based on the principles of legality, justice, impartiality, publicity, transparency.

They have several same concerns:

- monitor any violation of human rights by the governmental entities and officials at national or local levels;
- advise the Government, the Parliament and other bodies on violations and problems related to the legislation and its compliance with international human rights instruments;
- educate and inform population, government officials, police and other law-enforcement bodies in the field of human rights, participating in creation of educational human rights programmes as well as in their implementation.

Finally, Ombudsman Institution shall be able to prepare and publicize reports on any human rights matter and make use of all public organizations and mass media.

Main general problems with negative impact on situation of Human Rights protection are based on different kinds of discrimination (gender, age based, economic, social, etc), as well as mal-administration, trafficking in persons, corruption etc.

To make input into the improvement of the governance and ensuring of Human Rights Ombudsman have to fight these obstacles, through the preventive measures or restoration of the violated rights.

At the same time some Ombudsmen have specific challenges conditioned by:

- economic reasons
- wars and armed conflicts
- sufferings from natural disasters
- mal-administration
- unemployment
- high poverty level

- illiteracy
- HIV/AIDS etc.

Restoration of the Human Rights of people suffered from these challenges makes influence on the strategic plans and priorities of Ombudsman. These priorities are closely linked with the situation in the country. Sometimes they are typical for a few countries and in other cases they are specific for one or more countries in the region or for region in whole.

The Parliamentary Ombudsmen have the same role to try for:

- good governance
- improvement of legislation
- to raise standards of Human Rights protection
- to influence the attitudes, incorporate the function of enhancing uniformity of the Human Rights protection
- to enlighten authorities and citizens.

At the same time the Parliamentary Ombudsmen in different countries have different powers that are determined by their mandates in the frames of the National Law on Ombudsman.

For example, in accordance with the Constitutional Law of the Republic of Azerbaijan position of the Commissioner for Human Rights was set up to restore the human rights and freedoms enshrined in the Constitution of the country and in the international treaties to which the Republic of Azerbaijan is a party, violated by governmental, municipal bodies and officials of the Republic of Azerbaijan.

In the countries where the specialized ombudsmen are functioning and sometimes they have also the Parliamentary Ombudsman status, their relationships and appropriate collaboration have crucial role and have to be based on mutual respect, understanding and support, providing advances and assistance. Several problems arise in these cases to get the difficulties in sharing of powers, competences, responsibilities, functions and roles in the name of better promotion, protection of all basic human rights and when prompt restoration of the violated rights is necessary. In this context also strict sense of balance without any ambitions, pretensions, competitions have to be kept.

Ombudsmen in different countries usually have the same tools for enhancing of the human rights protection quality, i.e. supervision over rule of law and good governance.

At the same time the institute itself needs always renovation, feeding by the new innovative ideas, the new attitudes, new methodology and tools, the changes of programmatic and structural character in the name of improving of the strategic and current plans, long term and short term programmes for more effective using of the financial and human resources, sometimes changing the roles, duties and responsibilities of staff members for more effective using of their capacities.

Ombudsman Institution is in the dynamic changes, in progress throughout the different historic events at the country, region and global levels. Changes in the scope of priorities in Human Rights promotion and protection, as well as the new approaches in protection of the political, civic, economic, social, cultural rights are also observed.

It makes difference in the role of Ombudsman in protection of the Human Rights of the new appearing groups of population (refugees, IDPs, migrants, war martyr’s families, disabled, national, ethnic and religious minorities, drug abused and HIV/AIDS suffered and other high risk groups). That is why the progress in the role, responsibilities, competencies and powers of Ombudsman is needed.

And these powers have to be revised and extended in the light of the changing priorities and needs. The powers of Ombudsman have to be analyzed from time to time followed by their renovations and extension in accordance with the changing situation by urging to the country Parliament about the corresponding changes in Law on Commissioner for Human Rights.

At the same time it is important to use effectively all powers enshrined in the Law on Ombudsman. For example, using actively the right to submit motions to the country Parliament with regard to the adoption or review of laws with a view of more sufficient ensuring of Human Rights and Freedoms some changes and amendments to the laws were adopted.

The Ombudsman exercised the right to apply to the Constitutional Court of the Republic of Azerbaijan several times in 2004 and 2005.

The Ombudsman made inquiries concerning the rights of association and free entrepreneurship in order to vet the conformity article of the Civil Code with some articles of the Constitution also inquires related to judicial provisions of rights and freedoms. The Constitutional Court supported the Ombudsman’s proposals.

A numerous motions were submitted to the country President with regard of granting pardon to the imprisoned persons and totally over 150 prisoners, women, men, children, elderly, including so called “political prisoners” were pardoned and liberated from the places of detention. These are only a few samples of successful use of the Ombudsman’s powers.

In the process of evolution of the Ombudsman Institute the new concerns, new approaches are being forwarded, also the new attitudes and tools are needed for improving of this Institute, it’s role in promotion and protection of Human Rights. To my opinion these innovations are necessary in the Ombudsman’s activities both at National and International levels.

I would like to mention such kind of changes in the activities of the Azerbaijan Ombudsman Institute.

First of all I would like to attract your attention to the structural specifics:

- Nearby the traditional divisions (protection of political, economic, social rights etc.) in accordance with the country priorities and needs, the divisions for the refugees and IDPs, military servants’ and prisoners’ rights protection were approved;
- The regional offices are functioning under the supervision of Ombudsman;
- Specialized advisors from the staff members are appointed instead of the specialized ombudspersons that in some cases bring disharmony into the work of the Parliamentary Ombudsman;
- Council of the independent experts, including the representatives of the governmental and nongovernmental organizations;
- Resource centers on protection of elderly Rights and also rights of child are created and functioning successfully;
- For the further improving of our activities very important is adoption of the amendments to the Constitutional Law on Ombudsman, that were proposed to the country Parliament;

- For improving of the capacities and skills of staff members of this newly created Institute regular so called “Wednesday seminars” and trainings are being provided.

Another way of improving of the activities of Ombudsman is extending of the scope of Human Rights, covering the needs of people (consumer’s rights, intellectual property rights, etc.).

Various seminars and discussions with a wide spectrum of themes are being organized regularly at the Ombudsman Institution with participation of the main agencies and specialists on the topic discussed, nearby the scholars and practitioners.

These events are very useful in learning of the International and National Human Rights protection instruments, tools followed by implementation of the most acceptable of them in work of the Human Rights Commissioner at the National level. So, the societal learning process is also one of the important tools of Ombudsman.

Ombudsman is not decision maker. That is why it is very important for him to find effective ways and bridges for collaboration with the Governmental bodies, Ministries, State Committees, etc. And it is another very important tool for improving of the effectiveness of his activities.

That is why we try to find and implement the new methods for that. As example in collaboration with the country Parliament the circuit thematic Sessions of the Parliamentary Commissions at the Ombudsman Institution, discussions of the Draft Laws, recommended for adoption were organized.

Joint receiving of the complaints together with the Minister of Education, Ministry of Labor and Social Protection of Population, Chiefs of the Regional Local Executive Power and other officials at the Ombudsman Institution were very successful and appreciated by citizens.

Close collaboration with civil society is another specifity of our Ombudsman Institution’s work.

The important tool of Ombudsman is also networking of the organizations dealing with the Human Rights protection also coordination of their activities, motivation of the communities and creation of the resource centers, specialized in the field of Women’s rights, Child Rights, elderly, disabled, refugees and IDPs, prisoner’s rights.

The importance of these tools is being confirmed practically. So, a few networks are organized at our Ombudsman Institution:

- Network of the Regional offices;
- Council of the Independent Experts;
- University Juridical clinics' Network;
- Working groups on prisoner's rights;
- Resource centers on Child Rights and other

These functioning networks are great support in Ombudsman's capacity building and in attracting the Human Resources.

Creating of the working groups for preparing of specialized reports, organizing the interactive discussions and other concrete events in the frames of their main topics are also very productive and effective tools.

Human Rights education is one of the core functions of Ombudsman. The activities of Ombudsman contribute to the promoting of the public awareness on Human Rights. The most important outcome of the Human Rights education is motivation and empowerment of people or their groups (NGOs, CBOs, Communities etc.) to ensure their Human Rights as well as to encourage them to protect the rights of other people and their groups.

The key elements in this field, in my consideration are:

- identification and differentiation of the targeted people;
- preparing of special teaching curriculum modules, addressed to different groups of population ;
- inclusiveness of people themselves as trainers for sustainability;
- organizing of the interactive discussions with involvement of the interested acteurs;
- developing the new methods as well as the gender and age sensitive Human Rights education programmes.
- And I'm absolutely agree with opinion that we must educate the government policy makers, politicians, all level officials, the public, the media whenever we can.

To learn the experience of colleagues we organized in collaboration with UNESCO an International Conference of Ombudspersons on "Democratization through the Human Rights Education in collaboration with the civil society" from 29-30 November 2004 in Baku city.

Important tools are the publications of Ombudsman that are used by the governmental bodies and NGOs, scholars and students.

The specialized library on Human Rights is being created at the Ombudsman Institution.

The Ombudsman's relations with the media are an inseparable part of the activities. Regular coverage of main activities of the Ombudsman Institution in different fields was given through mass media.

In the year 2005 the UN Decade on Human Rights education, as well as the UN Decade on education for sustainable development were approved and recommended for implementation in all member countries. These new tendencies also would be useful to be taken into consideration in our future collaboration.

When analyzing the future role of the Ombudsman Institutions, I would like to pay prior attention to the next issues that in my consideration have to be in the center of disputes:

- the priorities in the Ombudsman's concerns to be periodically revised;
- the National Plans of action to be prepared and implemented;
- new methods of the monitoring of the implementation of the International treaties to which the country is a party, as well as of the National Laws;
- New methods of mediation with support of the lawyers, psychologists;
- the standard indicators and methods have to be adopted for evaluation of the achievements and certain challenges in the work of Ombudsman, also acceptable for the comparative situational analyses

Last but not least, the Commissioner for Human Rights is a key person in changing the attitudes, behavior of the governmental officials, of the state authorities at all levels of the governance, in motivation and creating of good, friendly environment for respect of the Human Rights, in prevention of any violation in this field, in ensuring the rights of any country habitant, in immediate actions for restoration of the violated rights.

That's why we have to be very sensitive to meet all requirements concerning the professional and moral personal qualities.

Let us never forget and to be always faithful to our oath, faithfully and honestly fulfill our powers, to observe the Constitution and Law of the country, to act independently and impartially.

At the end of my presentation I would like to underline that collaboration with the experienced Ombudspersons and their specialized organizations has crucial role in improving of the work and effectiveness of all national Human Rights Institutions and it is very important to learn the best practice from our colleagues in the region. Therefore, I hope to hear your comments, recommendations which might be useful for improving our activities on protection of the rights of all groups of the population at the national level.

Thank you for your attention.